

Service Date: September 11, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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| IN THE MATTER OF US WEST |) | UTILITY DIVISION |
| COMMUNICATIONS, Complaint by |) | |
| DAVID C. MOGAN, Concerning |) | DOCKET NO. 92.7.34 |
| Termination of Service |) | ORDER NO. 5645 |

FINAL ORDER

I. Factual Background.

On July 17, 1992 David C. Mogan (Complainant) filed the instant complaint against US West Communications (Defendant). Therein Complainant alleged that his telephone service at 406-364-2263 had been wrongfully terminated and requested the following relief: 1) A declaratory judgment finding that termination was unlawful and contrary to ARM 38.5.3339(3)(a)(i) and ARM 38.5.3339(5)(a); 2) an order directing Defendant to reconnect telephone service; and 3) reimbursement of attorney fees and costs.

On July 24, 1992 the Public Service Commission (Commission) served a notice of complaint upon Defendant.

On August 17, 1992 Defendant filed an answer and motion to dismiss. Therein Defendant requested that the complaint be dismissed since telephone service at 406-364-2263 had been reconnected.

On August 19, 1992 Complainant filed a request for default judgment under Rule 55(a) of the Montana Rules of Civil Procedure. The basis for this request was Defendant's failure to timely respond to the complaint. Complainant also filed a motion to strike Defendant's answer for this same reason.

II. Discussion.

The Commission initially notes that Defendant did file its answer one day late. A notice of complaint provides that a Defendant must either satisfy a complaint or answer the complaint within twenty (20) days of the service date of the notice. Since the notice of complaint was served on July 24, 1992, Defendant had until August 13, 1992 to respond. Defendant's answer was served on August 14, 1992.

Nonetheless, the issue of Defendant's failure to timely answer is rendered moot by the reconnection of Complainant's service prior to the filing of the answer. Since the complaint was satisfied, Defendant's motion to dismiss is properly granted.

In regard to Complainant's request for declaratory judgment, the Commission would note that it has the authority to issue declaratory rulings. See Section 2-4-501, MCA, et seq. However, this authority is granted for the purpose of ruling on the applicability any statute or rule or order of the agency. Section 2-4-501, MCA. Complainant does not present any question of applicability and the request for declaratory ruling must therefore be denied.

Finally, the Commission is unaware of any legal authority that would support the request for attorney fees and costs. Since none was provided by the Complainant, this request must also be denied.

CONCLUSIONS OF LAW

1. US West Communications provides regulated telecommunications services within the State of Montana and is a public utility under the regulatory jurisdiction of the Montana Public Service Commission. Sections 69-3-101 and 69-3-803(3), MCA.

2. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA.

3. The Commission has the authority to consider service complaints against a public utility. Section 69-3-321, MCA.

ORDER

1. The complaint filed by David C. Mogan against US West Communications in this Docket is hereby dismissed on the grounds that the complaint has been satisfied.

2. The request for a declaratory judgment is denied on the grounds that no question of applicability was presented.

3. The request for attorney fees and costs is denied since no legal basis for granting such fees and costs was presented.

Done and Dated this 8th day of September, 1992 by a vote of
5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DANNY OBERG, Chairman

WALLACE W. "WALLY" MERCER, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

TED C. MACY, Commissioner

ATTEST:

Ann Purcell
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.